

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GARY FRIEDRICH ENTERPRISES, LLC,
et al.,

08-CV-01533 (BSJ)(JCF)

Plaintiffs,

vs.

MARVEL ENTERPRISES, INC., et al.,

Defendants.

-----x

MOTION TO RECONSIDER

COMES NOW, Plaintiffs, Gary Friedrich Enterprises, LLC and Gary Friedrich, by their undersigned attorneys and respectfully move the Court to reconsider its Order dismissing Count V of Plaintiff's Complaint and Plaintiff's Amended Complaint. In support thereof, Plaintiffs state:

1. Count V of the Complaint sounded as a claim for accounting.
2. Count V of the Amended Complaint sounds as a claim for accounting.
3. On May 3, 2010, the Court dismissed Count V of the Complaint, along with Plaintiffs' state law claims, on the basis that they are preempted by the Copyright Act.
4. The Court dismissed Count V on the basis that it was a state law claim which has been preempted by the Copyright Act.
5. When Plaintiffs later filed their Amended Complaint, they included a claim for accounting as Count V.

6. On March 28, 2011, Defendants answered the Amended Complaint, but did not respond to Count V on the basis that it was previously dismissed.

7. Plaintiffs respectfully request that the Court reconsider its dismissal of Count V and reinstate it.

8. Count V of the Amended Complaint alleges that Plaintiffs and the Marvel defendants are co-owners of the copyright to Spotlight #5.

9. Count V further alleges that Plaintiffs are entitled to an accounting.

10. Accounting is a proper remedy under the Copyright Act for disputes over joint works.

11. Thus, Count V sounds under the Copyright Act and should not have been dismissed with Plaintiffs' state law claims.

WHEREFORE, Plaintiffs respectfully request that Count V of the Amended Complaint be reinstated and that Defendants be ordered to answer Count V within 30 days of the date of the Court's order. Plaintiffs further request such other relief as the Court deems just and equitable.

Respectfully submitted,

By: /s/ Eric Evans

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CERTIFICATE OF SERVICE

I hereby certify that the above pleading was filed electronically with the Clerk of the Court using the CM/ECF system this 17th day of October, 2011, which will send notification to all those entitled to receive such notice.

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The undersigned certifies that a copy of the foregoing document was served upon the following persons by enclosing same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage prepaid and by depositing said envelope in a U.S. Post Office Mail box in Granite City, Illinois on this 18th day of October, 2011.

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